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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 SHANNON RILEY,

No. C-13-2524 TEH (PR)

9 Petitioner,

10 v.

ORDER TO SHOW CAUSE; ORDER  
GRANTING LEAVE TO PROCEED IN  
FORMA PAUPERIS

11 RANDY GROUNDS, Warden,

(Doc. #3)

12 Respondent.  
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15 Petitioner Shannon Riley, a state prisoner incarcerated at  
16 Salinas Valley State Prison (SVSP) in Soledad, California, has filed  
17 a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254  
18 challenging the SVSP appeals coordinator's denial of Petitioner's  
19 appeal to expunge an incorrect prior arrest as a sex offender from  
20 his prison file. Doc. #1. Petitioner also seeks leave to proceed  
21 in forma pauperis (IFP). Doc. #2.

22 I

23 According to the Petition, on September 30, 2011,  
24 Petitioner was taken to the Unit Classification Committee for a  
25 program review because he had recently transferred to facility B  
26 from facility D. Petitioner received his written classification  
27 chrono and noticed an entry stating that he had a prior arrest as a  
28 sex offender. This was incorrect because Petitioner never was

1 arrested or charged as a sex offender. On October 4, 2011,  
2 Petitioner spoke to his counselor to have this incorrect entry  
3 expunged, but she informed him that he would have to file an appeal.

4 One week later, Petitioner filed an appeal to have the false  
5 entry removed from his file. The appeals coordinator "cancelled"  
6 Petitioner's appeal. Thereafter, Petitioner filed petitions for a  
7 writ of habeas corpus in the Superior Court of Monterey County, the  
8 Court of Appeal and the California Supreme Court. All the petitions  
9 were denied.

10 On June 5, 2011, Petitioner filed the instant petition for a  
11 writ of habeas corpus seeking expungement of the sex offender arrest  
12 from his file. Petitioner asserts habeas jurisdiction under Bostic  
13 v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989) (habeas corpus  
14 jurisdiction exists when petitioner seeks expungement of  
15 disciplinary finding from his record if expungement likely to  
16 accelerate eligibility for parole).

17 II

18 This Court may entertain a petition for a writ of habeas  
19 corpus "in behalf of a person in custody pursuant to the judgment of  
20 a State court only on the ground that he is in custody in violation  
21 of the Constitution or laws or treaties of the United States." 28  
22 U.S.C. § 2254(a). It shall "award the writ or issue an order  
23 directing the respondent to show cause why the writ should not be  
24 granted, unless it appears from the application that the applicant  
25 or person detained is not entitled thereto." Id. § 2243.

26 Petitioner seeks federal habeas corpus relief by alleging  
27 that his likelihood of getting released on parole is impaired due to  
28

the false sex offender arrest in his prison file. In Docken v. Chase, 393 F.3d 1024, 1028 (9th Cir. 2004), the Ninth Circuit affirmed its previous holding that "habeas corpus jurisdiction . . . exists when a petitioner seeks expungement of a disciplinary finding from his record if expungement is likely to accelerate the prisoner's eligibility for parole." (citing Bostic, 884 F.2d at 1269 and McCollum v. Miller, 695 F.2d 1044, 1047 (7th Cir. 1982)).

Liberalistically construed, Petitioner's claim appears cognizable under 28 U.S.C. § 2254 and merits an Answer from Respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

## III

For the foregoing reasons and for good cause shown,

1. Petitioner's motion to proceed in forma pauperis (Doc. #3) is GRANTED.

2. The Clerk shall serve by certified mail a copy of this Order and the Petition, and all attachments thereto (i.e., Doc. #1), on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this Order on Petitioner.

3. Respondent shall file with the Court and serve on Petitioner, within sixty-three (63) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the Answer and serve on Petitioner a copy of all portions of the record that

1 have been transcribed previously and that are relevant to a  
2 determination of the issues presented by the Petition.


3 If Petitioner wishes to respond to the Answer, he shall do  
4 so by filing a Traverse with the Court and serving it on Respondent  
5 within twenty-eight (28) days of his receipt of the Answer.

6 4. In lieu of an Answer, Respondent may file a Motion to  
7 Dismiss on procedural grounds, as set forth in the Advisory  
8 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
9 If Respondent files such a motion, Petitioner shall file with the  
10 Court and serve on Respondent an Opposition or Statement of  
11 Non-Opposition within twenty-eight (28) days of receipt of the  
12 motion, and Respondent shall file with the Court and serve on  
13 Petitioner a Reply within fourteen (14) days of receipt of any  
14 Opposition.

15 5. Petitioner is reminded that all communications with  
16 the Court must be served on Respondent by mailing a true copy of the  
17 document to Respondent's counsel. Petitioner also must keep the  
18 Court and all parties informed of any change of address.

19  
20 IT IS SO ORDERED.

21  
22 DATED 06/25/2013

  
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THELTON E. HENDERSON  
United States District Judge